

IMPROVEMENTS & ROAD MAINTENANCE AGREEMENT ACCORDING TO  
POLICY REGARDING COLLATERAL FOR IMPROVEMENTS  
COMPANY NAME – LAND USE / ACCESS PERMIT CASE NUMBER

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between **COMPANY NAME**, a corporation organized under the laws of the State of \_\_\_\_\_, whose address is **ADDRESS**, hereinafter referred to as “Property Owner,” authorized to do business in the State of Colorado, and the County of Weld, a body corporate and politic of the State of Colorado, by and through its Board of County Commissioners, whose address is 1150 “O” Street, Greeley, Colorado 80631 hereinafter referred to as “County.”

WITNESSETH:

WHEREAS, Property Owner is the owner of the following described property in the County of Weld, Colorado:

**[LEGAL DESCRIPTION]** \_\_\_\_\_ of Section \_\_\_\_, Township \_\_\_\_ North, Range \_\_\_\_ West  
of the 6th P.M., Weld County, Colorado and

hereinafter referred to as “the Property,” and

WHEREAS, Property Owner has received Board of County Commissioner approval of **CASE NUMBER**, and

WHEREAS, Property Owner acknowledges that the final approval of **CASE NUMBER** is conditional upon Property Owner’s funding and/or construction of the on-site and off-site improvements and road maintenance described in this Agreement and depicted in the following incorporated exhibits:

**Exhibit A-1** – On-Site Improvements Costs of Construction, (If Applicable)  
**Exhibit B-1** – On-Site Improvements Construction Schedule, (If Applicable)  
**Exhibit A-2** – Off-Site Improvements Costs of Construction,  
**Exhibit B-2** – Off-Site Improvements Construction Schedule,  
**Exhibit A-3** – Future Improvements Costs of Construction,  
**Exhibit B-3** – Future Improvements Construction Schedule Triggers,  
**Exhibit C** – Construction Plans,  
**Exhibit D** – Plat Map (recorded simultaneously with this Agreement), and

WHEREAS, Property Owner acknowledges they may not operate as described in **CASE NUMBER** until said improvements have been completed and accepted by County, and

WHEREAS, Property Owner acknowledges that pursuant to the provisions of Weld County Code Sec. 23-2-290, the failure to commence construction of the improvements outlined herein within three (3) years of the approval of **CASE NUMBER** may result in the revocation or suspension of **CASE NUMBER**, upon consideration and order of the Board of County Commissioners, and

WHEREAS, the parties agree that the Property Owner shall provide collateral for certain on-site (if applicable) and all off-site improvements required by this Agreement when the Board of County Commissioners approves this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF the foregoing and of the promises and covenants contained herein, the parties hereto promise, covenant and agree as follows:

## **PART 1: SITE SPECIFIC PROVISIONS (IF APPLICABLE)**

**A. On-Site Improvements:** Property Owner shall be responsible for the construction of all On-Site Improvements as shown on the accepted **Exhibits CASE NUMBER**. Improvements located on the Property shall be considered “On-Site Improvements.”

1.0 **On-Site Improvements Responsibilities.** Property Owner is solely responsible for all designated improvements. These responsibilities include but are not limited to the following, as applicable: design, surveys, utility locates, dedication of ROW, if necessary, ROW acquisition, if necessary, ROW and Access Permits and fees, coordination with oil and gas operators and facilities and affected irrigation facilities and utilities, traffic control, and project safety during construction. Property Owner shall at its own expense, plant, install and/or maintain all grass and other landscaping and re-seeding where applicable as shown on the accepted **Exhibits**. Additionally, the Property Owner shall install and/or maintain fencing to screen the property where applicable as indicated on the accepted **Exhibits**. Property Owner shall obey all applicable regulations issued by the Occupational Safety and Health Administration (OSHA), Colorado Department of Transportation (CDOT), Colorado Department of Public Health and Environment (CDPHE), and other Federal, State, or County regulatory agencies.

2.0 **On-Site Grading, Drainage Facilities and Paving.** Property Owner shall, at its sole expense, grade and/or pave, if applicable, specified roadways, accesses, easements and parking areas, and install accepted drainage and signage components, adjacent to or within the interior portion of the property in accordance with the directives of the Weld County Department of Public Works and Department of Planning Services, as further described in the accepted **Exhibits**. Any other on-site improvements shall be completed as indicated on the accepted Construction Plans for this facility. Property Owner shall be responsible for all maintenance of the on-site improvements. Additional infrastructure improvements will be addressed at the time of application for any future amended USR. Some of these improvements may include work extending into State or County ROW in which case a ROW or access permit is required.

3.0 **Cost of Construction Exhibit.** If applicable, A registered Colorado Engineer or equivalent must sign and stamp the construction cost estimate on **Exhibit A-1**. If more than three (3) years have passed since the last construction cost estimate was provided, the Property Owner shall provide an updated construction cost estimate prior to the start of construction.

4.0 **Construction Schedule Exhibit.** **Exhibit B-1 provided by the property owner** indicates the construction schedule for all on-site improvements, including an anticipated completion date. Property Owner shall not commence construction of improvements prior to approval of this Agreement, including the attached **Exhibits**, and receipt of the appropriate Grading Permit, Access Permit, and/or ROW Permit, if applicable. Property Owner shall substantially complete all improvements in accordance with **Exhibit B-1** in order to request the warranty period begin. In the event that the construction schedule is not current, the Property Owner shall submit a revised construction schedule.

5.0 **On-site Improvements Collateral.** Collateral is accepted and released by the Board of County Commissioners pursuant to the Weld County Code. In order to receive partial or full release of collateral, Property Owner must contact either the Planning Department who conducts inspections for all on-site improvements, and/or the Public Works Department who conducts inspections for all off-site improvements. If all improvements are determined to be in accordance with this approved agreement, the Property Owner may submit either new or revised collateral documentation to the Public Works Department. Then Public Works submits the documentation to the Clerk to the Board’s office, for the request to be placed on the BOCC agenda. Additional information about collateral is outlined in Part II.B of this Agreement.

6.0 As-Built Plans. “As-built” plans shall be submitted once the Property Owner has completed improvements as described in Part II.B, Subsection 3.2.3, of this Agreement. Property Owner shall provide an electronic copy of the as-built drawings. The as-built drawings shall be stamped, signed, and dated by a licensed and registered Professional Land Surveyor or Professional Engineer.

**B. Off-Site Improvements (as required by the BOCC):** The Property Owner shall be responsible for the construction of certain off-site safety improvements identified in the USR hearing Resolution, which may include, but are not limited to: construction of adequate turning radii of sixty-five (65) feet at the main entrances and exits which extend into county road ROW connecting to the county road system, and off-site drainage and signage installations, as indicated on the accepted **Exhibits**. On-Site improvements that create more run-off than the historical amount may require off-site drainage improvements to roads and ROW. Any approved access point(s) improvements will include standard County approved tracking control, and may include a double cattle guard set (one right after the other), placed back to back across the entire width of the access, to ensure a complete revolution of the truck tires in order minimize the tracking of mud and debris onto the adjacent County road.

Additional Off-Site Improvements to be constructed prior to operation are:

- 1) Design and construct a paved roadway along CR \_\_ from CR \_\_ to the project access
- 2) Design and construct a left deceleration lane on CR \_\_
- 3) Design and construct a right deceleration lane on CR \_\_
- 4) Design and construct a right acceleration lane on CR \_\_
- 5) Design and construct a left acceleration lane on CR \_\_

1.0 Road Improvements Responsibilities. Property Owner is solely responsible for all the off-site designated improvements. These responsibilities may include but are not limited to the following: design, surveys, utility locates, acquisition of ROW, if necessary, dedication of ROW, if necessary, ROW and Access Permits and fees, coordination with oil and gas operators and facilities and affected irrigation facilities, and utilities, traffic control, and project safety during construction. Property Owner shall obey all applicable regulations issued by OSHA, CDOT, CDPHE, and other federal, state, or county regulatory agencies.

2.0 Cost of Construction Exhibit. The cost of construction estimates (engineer’s estimate) as identified in **Exhibit A-2** detail the costs used in determining the collateral requirement for the off-site improvements related to the development. A registered Colorado Engineer must sign and stamp the construction cost exhibit on **Exhibit A-2**. If more than three (3) years have passed since the last construction cost estimate was provided, the Property Owner shall provide an updated construction cost estimate prior to the start of construction.

3.0 Construction Schedule Exhibit. **Exhibit B-2** is provided by the Property Owner indicating the construction schedule for all off-site improvements, including an anticipated completion date. Property Owner shall not commence construction of any improvements, record plat, or receive any permitting prior to approval of the of this Agreement, the attached **Exhibit C**. receipt of the appropriate Grading Permit, Access Permit, and/or ROW Permit, if applicable. Property Owner shall substantially complete all improvements in accordance with **Exhibit B-2** in order to request the warranty period begin. In the event that the construction schedule is not current, the Property Owner shall submit a revised construction schedule.

4.0 Off-site Improvements Collateral. As required, collateral is accepted and released by the Board of County Commissioners pursuant to the Weld County Code. Additional information about collateral is outlined in Part II.B of this Agreement.

5.0 As-Built Plans. “As-built” plans shall be submitted at the time the letter requesting release of collateral is submitted or once the Property Owner has completed improvements as described in Part II.B, Subsection 3.2.3, of this Agreement. Property Owner shall also provide an electronic copy of the as-built drawings. The as-built drawings shall be stamped, signed, and dated by a licensed and registered Professional Land Surveyor or Professional Engineer.

**C. Future Off-Site Improvements:**

1.0 Traffic Triggers. When the Property’s traffic reaches certain safety thresholds as set forth in this agreement, the Property Owner shall design and construct certain road improvements based on the amount of traffic being generated by the site. Property Owner’s development may not currently meet the traffic safety triggers requiring the improvements specified below. However, future off-site or phased improvements may be warranted in the future.

Property Owner is required to design, obtain right-of-way, relocate utilities, and construct said auxiliary lanes into their site when all traffic to/from the Property meets the following traffic triggers:

- 1) Property Owner shall design and construct a left deceleration/turn lane on CR \_\_ whenever traffic exceeds 10 vehicles per hour (VPH) turning left into the Property for an average daily peak hour.
- 2) Property Owner shall design and construct a right deceleration/turn lane on CR \_\_ whenever traffic exceeds 25 VPH turning right into the Property for an average daily peak hour.
- 3) Property Owner shall design and construct a right acceleration lane on CR \_\_ whenever traffic exceeds 50 VPH turning right out of the Property for an average daily peak hour.
- 4) Property Owner shall design and construct a left acceleration lane on CR \_\_ whenever such a lane would be a benefit to the safety and operation of the roadway. The County, in its sole discretion, shall determine if a left acceleration lane is required.

2.0 Property Owner’s Responsibilities when Future Triggers are Met. Property Owner is solely responsible for all designated improvements and their cost. These responsibilities include but are not limited to the following, as applicable: design, surveys, utility locates, acquisition of ROW, if necessary, dedication of ROW, if necessary, ROW and Access Permits and fees, coordination with oil and gas operators and facilities and affected irrigation facilities and utilities, traffic control, and project safety during construction. Property Owner shall obey all applicable regulations issued by OSHA, CDOT, CDPHE, and other federal, State, or County regulatory agencies.

3.0 Cost of Construction Exhibit. The cost of construction estimates (engineer’s estimate) as identified in **Exhibit A-3** detail the costs used in determining the collateral requirement for the development. Construction costs must be obtained through a registered Colorado Engineer. A registered Colorado Engineer must sign and stamp the construction cost exhibit for sites that have project collateral. New or additional collateral may be required for the triggered improvements.

4.0 Construction Schedule Exhibit. When the trigger is met the Property Owner shall submit **Exhibit B-3** within 6 months of being notified regarding the need for the triggered improvements, indicating the construction schedule, including completion date for the improvements. Property owner shall not commence construction of improvements prior to approval of the Construction Plans and receipt of the appropriate Grading Permit, Access Permit, and/or ROW Permit. Property Owner shall complete all improvements in accordance with the construction schedule exhibit. The construction of the triggered improvements shall be completed within the specified timeframe, which may not exceed three (3) years from the date the trigger is first met. Year 1 design deadline; Year 2 ROW/Utilities; Year 3 Construction. Property Owner shall collateralize 110% of the cost of the construction improvements, including design,

right-of-way, and utility relocation cost within six months of being notified of meeting the triggers.

5.0 Collateral. Collateral for any additional improvements required by the triggers may be required by the BOCC. Collateral is accepted and released by the Board of County Commissioners pursuant to the Weld County Code. Additional information about collateral is outlined in Part II.B of this Agreement.

6.0 As-Built Plans. “As-built” plans shall be submitted at the time the letter requesting release of collateral is submitted or once the Property Owner has completed improvements as described in Part II.B, Subsection 3.2.3, of this Agreement. Property Owner shall also provide an electronic copy of the as-built drawings. The as-built drawings shall be stamped, signed, and dated by a licensed and registered Professional Land Surveyor or Professional Engineer.

**D. Haul Routes and Proportional Share of Maintenance and Improvements:** The Property Owner shall be financially responsible for its proportional share of the County’s costs associated with maintaining and/or improving designated haul/travel routes.

1.0 Haul Routes. The following roads are designated as haul/travel routes for the Property:

- 1) CR \_\_ between CR \_\_ and CR \_\_, and
- 2) CR \_\_ between CR \_\_ and CR \_\_

2.0 Haul trucks shall enter and exit the site at the approved access(es) on CR \_\_ and travel east-west / north-south to the nearest paved road for further dispersal. Any County roads used by **CASE NUMBER** traffic may become part of the established haul/travel routes. Weight Limits. No travel vehicles may exceed CDOT required specifications for pounds per axle and axle configurations unless overweight permits have been applied for and granted.

3.0 Temporary Deviations. In unusual or rare occasions, if projects mandate deviation from the above-mentioned haul/travel route for a limited period (six months or less), Weld County Public Works may authorize, in writing, the deviation. In that circumstance, haul/travel vehicles will utilize paved county roads whenever possible. A deviation from the established haul/travel route lasting more than six (6) months or requests for one (1) or more deviations within a 12-month period shall authorize the County to change the haul/travel routes designated herein, and provide notice to the Property Owner.

4.0 Haul Route Signage. Property Owner shall install travel route signs, if applicable, as per Manual of Uniform Traffic Control Devices standards, at all exit points of the Property which can be clearly seen by drivers leaving the facility and which clearly depict County approved travel routes.

5.0 No Deviation from Permitted Haul Routes. Except as authorized by the Board pursuant to this Agreement, no use of any roads other than those specifically authorized for use in this Agreement is permitted without the prior written amendment of this Agreement.

6.0 Annual Road Inspection. County may conduct a road inspection annually with the cooperation of Property Owner and all other Property Owners and/or Lessees who are required by County to participate in road improvement/maintenance agreements for the haul routes designated in this Agreement. As a result of the annual inspection, County, in its sole discretion, shall determine actual conditions and shall further determine what road repair/improvement/maintenance work is to be performed during that construction season. Notification to the Property Owner of the required roadway repairs will be given as soon as the data become available.

7.0 Property Owner’s Proportional Share of Costs. In its sole discretion, at the time that maintenance

or improvements become necessary, County will determine Property Owner's proportional share of off-site maintenance and improvement costs based upon then-current Equivalent Single Axle Load (ESAL) traffic counts that identify vehicles travelling to or from the Property. For purposes of accuracy, the County has the right to install traffic counters at the access point to the Property. The County will divide these traffic counts by the total traffic count on the affected county road, resulting in Property Owner's proportional share. The Property Owner's proportional share only applies to changes in road maintenance conditions, and not construction of auxiliary lanes for example. Changes to road maintenance conditions include, but are not limited to: gravel to magnesium chloride, magnesium chloride to chip seal or other interim pavement surface, hot mix asphalt improvements, or any combinations therein.

8.0 Notification. The County shall notify Property Owner of County's preliminary determination and assessment of Property Owner's proportionate share of costs of maintenance, repair, or improvements to Property Owner's designated haul/travel routes. Prior to County's final determination and assessment, County shall provide Property Owner with a reasonable opportunity to review, comment upon and supplement County's data, collection methodology, and determinations. The County shall review and consider Property Owner's input prior to making a final determination and assessment.

**E. Maintenance Requirements:**

1.0 Off-site recurring maintenance, if applicable, as required by the Board:

- 1) Application of topical magnesium chloride on CR \_\_\_\_5-7 times annually or if additional applications above this amount are needed in accordance with the amount of traffic generated.
- 2) Application of full-depth magnesium chloride 3 times a year on CR

2.0 Dust Control. Property Owner shall be financially responsible for its proportional share of dust control on unpaved designated haul/travel routes after commencement of operation. The amount and extent of dust control will be determined by site-specific conditions at the time, as determined exclusively by County personnel. Dust abatement along the relevant haul/travel routes is expected to occur approximately two to five times per year. Dust abatement is required for roads with more than 200 vehicles per day, per section 8-6-100 of the Weld County Code.

1.1 Dust Control During Construction. If necessary, as determined by the County, the Property Owner shall cause to be performed within 30 days of notification, at its sole expense, dust control by a contractor approved by Weld County Public Works during the construction period of the development.

3.0 Repair. Property Owner shall be financially responsible for its proportional share of excavation, patching, and pavement repair on designated haul/travel routes. The amount and extent of repair and paving measures will be determined by site-specific conditions at the time, as determined exclusively by County personnel.

4.0 Calculation of Property Owner's Proportional Share of Costs. The County shall notify Property Owner of County's preliminary determination and assessment of Property Owner's proportional share of costs of maintenance, repair, or improvements to Property Owner's designated haul/travel routes. Prior to County's final determination and assessment, County shall provide Property Owner with a reasonable opportunity to review, comment upon and supplement County's data, collection methodology, and determinations. The County shall review and consider Property Owner's input prior to making a final determination and assessment. The County shall have sole responsibility for determination of Property Owner's proportional share of costs. Property Owner agrees to pay such proportional share of costs within 30 days of receiving an invoice from County.

5.0 Need for Immediate Repairs: In the event of damage to a designated haul/travel route by project traffic that causes an immediate threat to public health and safety or renders the road impassible (“Significant Damage”), County shall, after inspection, notify Property Owner of such Significant Damage. Property Owner shall identify the repair required and shall consult with County on the extent, type, timing, materials and quality of repair (i.e. temporary versus permanent) within twenty-four (24) hours after receipt of such notice and shall commence such repair within forty-eight (48) hours after receipt of such notice. If such repair is not commenced within such forty-eight (48) hour period, County shall have the right to draw on the Road Maintenance Collateral and use such funds to perform such repair. If Property Owner identifies Significant Damage prior to receiving notice thereof from County, Property Owner may commence repair of such Significant Damage and shall concurrently notify County of the extent, type, timing, materials and quality of repair (i.e. temporary versus permanent).

6.0 Repair of Road: On or before December 31 of the calendar year in which County staff has determined through site analysis and/or pavement testing that a particular haul/travel route road portion will require paving measures in order to protect the public health, safety, and welfare, and the County has budgeted sufficient funds for the following calendar year to pay its share of the Off-Site Improvement/Repair Costs, County shall notify Property Owner in writing that the Off-Site Improvements/Repairs shall be undertaken. Within ninety (90) days of its receipt of County’s notice of the need to undertake the road maintenance repairs and/or improvements, Property Owner shall submit Off-Site Construction Plans and Cost Estimates to County for review. Property Owner shall have sole responsibility for the completion of the repairs and/or improvements on or before December 15 of the year following County’s notice of the need for repairs.

5.1 In County’s sole discretion, County may undertake the repairs and/or improvements. Property Owner’s payment for its Proportionate Share of the road repairs/improvements will be calculated as determined in this Agreement. Property Owner will be invoiced accordingly for those proportional share costs.

## **PART 2: GENERAL PROVISIONS**

### **A. Engineering and Construction Requirements:**

1.0 Engineering Services. Property Owner shall furnish to County, at its own expense, all engineering services in connection with the design and construction of the off-site improvements and all on-site drainage-related structures if required by any Municipal Separate Storm Sewer System (MS4) permit, identified on the accepted Construction Plans according to the construction schedule set forth in the construction schedule exhibits. The required engineering services shall be performed by a Professional Engineer and Land Surveyor registered in the State of Colorado, and shall conform to the standards and criteria established by the County for public improvements. The required engineering services shall consist of, but not be limited to: surveys, designs, plans and profiles, estimates, construction supervision, and the submission of necessary documents to the County.

2.0 Rights-of-Way and Easements. Before commencing the construction of any off-site improvements herein agreed upon for public ROW or easements, Property Owner shall acquire, at its sole expense, good and sufficient ROW and easements made necessary for the improvements. The County will not exercise eminent domain on behalf of Property Owner. All such ROW and easements for the construction of roads to be accepted by the County shall be conveyed to the County on County-approved forms and the documents of conveyance shall be furnished to the County for acceptance with express written authority of the BOCC and recording.

3.0 Construction. Property Owner shall furnish and install, at its own expense, the improvements (and any drainage-related structures required by any MS4 permit) identified on the accepted **Exhibits** and shall be solely responsible for the costs listed on the cost of construction exhibits, with the improvements being completed also in accordance with the schedule set forth in the construction schedule exhibits. The Board of County Commissioners, at its option, may grant an extension of the time of completion set forth in construction schedule exhibits stated herein upon application by the Property Owner. Said construction shall be in strict conformance to the plans and drawings accepted by the County and the specifications adopted by the County.

4.0 Testing. Property Owner shall employ, at its own expense, a qualified testing company previously approved by the County to perform all testing of materials or construction; and shall furnish copies of test results to the County. If County discovers inconsistencies in the testing results, Property Owner shall employ at its expense a third party qualified testing company approved by County. Such third party shall furnish the certified results of all such testing to the County. At all times during said construction, the County shall have the right to test and inspect material and work, or to require testing and inspection of material and work at Property Owner's expense. Any material or work not conforming to the approved plans and specifications, including but not limited to damages to property adjacent to the construction plan area shall be repaired, removed or replaced to the satisfaction of the County at the expense of Property Owner.

5.0 Construction Standards. Design and construction of all off-site improvements shall conform to the current version of CDOT's "Standard Specifications for Road and Bridge Construction" and the Weld County Engineering and Construction Guidelines.

6.0 Traffic Control. Prior to any construction in County and/or State ROW, and as a condition of issuance of any ROW or Access Permit, the Property Owner shall submit a traffic control plan for County review. During construction, appropriate safety signage shall be posted in accordance with the then-current version of the Manual of Uniform Traffic Control Devices.

**B. Collateral:**

1.0 General Requirements for Collateral. Property Owner shall provide to County collateral to guarantee all of Property Owner's obligations under this Agreement: (1) *Project Collateral* is required for completion of certain on-site and all off-site improvements as applicable, as described in this Agreement; (2) *Warranty Collateral* is required for all off-site improvements during the two-year warranty period; and (3) *Road Maintenance Collateral* is required to be kept in place for the life of the permit/project. Collateral acceptance and release is governed by the Weld County Code.

1.1 Project Collateral shall be submitted to guarantee completion of certain on-site and all required off-site improvements identified in the **Exhibits**. Project Collateral must be submitted in an amount equal to 100% of the value of the improvements, as calculated in the cost of construction exhibits. Project Collateral must be submitted at the time of execution of the Agreement, unless otherwise directed by the Board of County Commissioners. In the event that Property Owner fails to adequately complete the required improvements, County may, in its sole discretion, access Project Collateral for the purpose of completing such improvements. It may be necessary to provide additional collateral in the event the cost estimate is older than three (3) years. **NO WORK SHALL COMMENCE UNTIL PROJECT COLLATERAL HAS BEEN SUBMITTED AND ACCEPTED BY THE COUNTY.**

1.2 Warranty Collateral shall be submitted and held by the County until release after the two-year warranty period following the County's initial approval of the improvements. Warranty



Collateral shall be in an amount equal to 15% of Project Collateral. In the event that Property Owner fails to adequately complete or repair improvements during the warranty period, County may, in its sole discretion, access Warranty Collateral for the purpose of completing such improvements.

1.3 Road Maintenance Collateral shall be submitted and held by County for the life of the development. Road Maintenance Collateral is \$3,600 for developments with paved designated travel routes, and \$2,400 for developments with unpaved designated travel routes. The Road Maintenance Collateral may be accessed by County if, following notification to Property Owner of required roadway safety related repairs or maintenance (including dust control), Property Owner fails to perform said repairs within the time allowed in County's notification. If any of this collateral shall be collected by County, Property Owner shall replace the amount, plus interest, within six (6) months. If no Project Collateral is required to be submitted, Road Maintenance Collateral shall be submitted at the time of execution of this Agreement.

2.0 Form of Collateral. Collateral may be in the form of a letter of credit, a surety bond, or a cash deposit, subject to the requirements and restrictions of section 2-3-30 of the Weld County Code, as that section may be amended from time to time.

3.0 Release of Collateral. Collateral shall be released in accordance with section 2-3-30 of the Weld County Code. For collateral release, the Planning Department conducts inspections for on-site improvements, and the Department of Public Works conducts inspections for off-site improvements.

3.1 Timing of Release. Project Collateral may be released upon completion of all improvements required by the Exhibits after initial approval by the County. Warranty Collateral shall be withheld by County from and at the time of release of Project Collateral, or may be submitted separately by Property Owner. Warranty Collateral may be released upon the approval of the County at the end of the two-year warranty period. Road Maintenance Collateral may be withheld from and at the time of release of Warranty Collateral, or may be submitted separately by Property Owner.

3.2 Request for Release of Collateral. Prior to release of collateral by Weld County for the entire project or for a portion of the project, the Property Owner must present a Statement of Substantial Compliance from an Engineer registered in the State of Colorado. The Statement of Substantial Compliance shall state that the project or a portion of the project has been completed in substantial compliance with accepted plans and specifications documenting the following:

3.2.1 The Property Owner's Engineer or his representative has made regular on-site inspections during the course of construction and the construction plans utilized are the same as those accepted by Weld County.

3.2.2 For the improvements to public rights-of-way or easements, test results must be submitted for all phases of this project as per Colorado Department of Transportation (CDOT) Schedule for minimum materials sampling, testing and inspections found in CDOT Materials Manual.

3.2.3 "As-built" plans shall be submitted at the time the letter requesting release of collateral is submitted or at such time as the Property Owner has completed improvements as shown on the **Exhibit C** and/or **Exhibit D**, and shall be stamped and approved by an Engineer registered in the State of Colorado, if an Engineer was initially required for the project. The Property Owner's Engineer shall certify that the project "as-built" is in substantial compliance with the plans and

specifications as approved, or that any material deviations have received prior written acceptance from the County Engineer.

3.3 County's Response to Request for Release of Collateral. Following a written request for release of collateral, County personnel will inspect the improvements as provided in this Agreement. Upon approval, the Board of County Commissioners may release said collateral.

**C. Acceptance of Improvements:**

1.0 Acceptance of On-Site Improvements: Upon completion of construction of all required on-site improvements as described in the Construction Plans, Property Owner shall submit to the Weld County Department of Planning a Statement of Substantial Compliance, and shall request inspection of the On-Site Improvements. County personnel shall then inspect the improvements. If the County determines the improvements were not constructed in accordance with the Construction Plans, the County shall direct the Property Owner to correct the deficiencies. If the County determines the improvements were constructed in accordance with the Construction Plans, the County shall approve the improvements and request the Board of County Commissioners authorize release of collateral for On-Site Improvements.

2.0 Acceptance of Off-Site Improvements: Upon completion of the off-site improvements, Property Owner shall contact the Weld County Department of Public Works and request an inspection of such improvements. Upon request, County personnel will initiate the inspection, approval, and acceptance process.

3.0 Inspection, Approval, and Acceptance Process:

3.1 Upon completion of construction of all off-site improvements as described in the Construction Plans, Property Owner shall submit to the Weld County Department of Public Works a Statement of Substantial Compliance by Property Owner's Engineer along with "as-built" drawings as required in B.3.2.3, above, and shall request County inspection of the Off-Site Improvements. County personnel shall then inspect the improvements. If the County determines the improvements were not constructed in accordance with the Construction Plans, the County shall direct the Property Owner to correct the deficiencies. If the County determines the improvements were constructed in accordance with the Construction Plans, the County shall initially approve the Off-Site Improvements.

3.2 Two-Year Warranty Period. Such initial approval begins the two-year warranty period. Upon completion of the two-year warranty period, County Public Works personnel shall, upon request by the Property Owner, inspect the subject improvements, and notify the Property Owner of any deficiencies. If any deficiencies are discovered, the Property Owner shall correct the deficiencies. County personnel shall re-inspect the improvements after notification from the Property Owner that said deficiencies have been corrected. If the County personnel finds that the improvements are constructed according to County standards, he or she shall approve the improvements. Such final approval shall authorize the Property Owner to request the Board of County Commissioners to release the Warranty Collateral.

3.3 Placement of Improvements into Service Prior to County Approval. If requested by the Property Owner and agreed by the County, portions of the improvements may be placed in service when completed according to the schedule shown on the construction schedule exhibit, but such use and operation shall not alone constitute an approval or acceptance of said portions of the improvements. County may, at its option, issue building permits for construction for which the improvements detailed herein have been started but not completed according to the schedule shown

on the construction schedule exhibit, and may continue to issue building permits so long as the progress of work on the improvements is satisfactory to the County, and all terms of this Agreement have been faithfully kept by Property Owner.

**D. Access and Right-of-Way Permits:**

1.0 Access Permits. Property Owner shall not use any access onto any County road unless and until an access permit has been issued by the Department of Public Works. Public Works may condition the issuance of an updated access permit on the amendment of this Agreement if the updated access permit authorizes the use of an additional access point, or if there is a change in use of the current access point, as permitted by Article V of Chapter 12 of the Weld County Code.

2.0 Right-of-Way (ROW) Permits. Per Article IV of Chapter 12 of the Weld County Code, any work occurring within County ROW requires a ROW permit issued by the Department of Public Works. No work shall occur without said ROW permit.

**E. Enforcement and Remedies:**

1.0 Violation of Terms of Agreement. If in County's opinion, Property Owner has violated any of the terms of this Agreement, County shall notify Property Owner of its belief that the Agreement has been violated and shall state with specificity the facts and circumstances which County believes constitute the violation. Property Owner shall have fifteen (15) days within which to either cure the violation or demonstrate compliance. If, after fifteen (15) days have elapsed, County believes in good faith that the violation is continuing, County may consider Property Owner to be in breach of this Agreement.

2.0 Remedies for Breach by Property Owner. In the event that County determines that Property Owner has violated the terms of this Agreement, and has failed to correct said violation, County may exercise any or all of the following remedies, or any other remedy available in law or equity.

2.1 Access and Use of Collateral. County may access and use collateral to address the issues specific to the violation. For example, the County may access and use Project Collateral in order to complete improvements as required by the Construction Plans, when such improvements have not been completed in accordance with the Construction Schedule.

2.2. Withholding Permits. County may "lock" any or all lots within the Property, which precludes the continued issuance of building permits, zoning permits, septic permits, or any other permit issued by any department of the County.

2.3 Court Action. County may seek relief in law or equity by filing an action in the Weld District Court or Federal District Court for the District of Colorado, except that no such civil action or order shall be necessary to access collateral for the purpose of completing improvements as described above.

2.4 Revocation of USR Permit. Property Owner acknowledges that failure to comply with the terms of this Agreement constitutes cause to revoke the USR, and County may exercise this option in its sole discretion by proceeding with revocation under the then current provisions of the Weld County Code.

3.0 Termination of Agreement. This Agreement shall terminate upon the earliest of the following events:

- 3.1 Failure to Commence. County may terminate this Agreement upon or after revocation of the underlying land use approval under Weld County Code section 23-2-290. However, County may still exercise all necessary activities under this Agreement that the County determines necessary to protect the health, safety, and welfare of the residents of Weld County.
- 3.2 Cessation of all Permit Related Activities. Termination of this Agreement shall occur upon Property Owner's complete cessation of all activities permitted by the USR including any clean up or restoration required. A partial cessation of activities shall not constitute a Termination of this Agreement, nor shall County's issuance of a partial release/vacation constitute a Termination. Unless informed in writing by the Property Owner of cessation of activities, and verified by the County, cessation shall only be presumed if the County determines that the USR has been inactive for three (3) years. Property Owner shall not be entitled to a release of Project or Warranty Collateral unless and until the improvements required by this Agreement are completed.
- 3.2 Execution of Replacement Agreement. This Agreement shall terminate following County's execution of a new Improvements Agreement with a new property owner or operator who has purchased the Property or has assumed the operation of the business permitted by the USR, and intends to make use of the rights and privileges available to it through the then existing USR.
- 3.3 Revocation of USR. This Agreement shall terminate following County's revocation of Property Owner's USR, except that the Property Owner shall only be released from this Agreement after the successful completion of all improvements required under this Agreement, which may be completed by County after accessing Property Owner's collateral if Property Owner fails to complete such improvements.

**K. General Provisions:**

**1.0 Successors and Assigns.**

1.1 Property Owner may not delegate, transfer, or assign this Agreement in whole or in part, without the prior express written consent of County and the written agreement of the party to whom the obligations under this Agreement are assigned. Consent to a delegation or an assignment will not be unreasonably withheld by County. In such case, Property Owner's release of its obligations shall be accomplished by County's execution of a new Improvements Agreement with the successor owner of the property.

1.2 County's rights and obligations under this Agreement shall automatically be delegated, transferred, or assigned to any municipality which, by and through annexation proceedings, has assumed jurisdiction and maintenance responsibility over all roads affected by this Agreement.

2.0 Severability. If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement shall be construed and enforced without such provision, to the extent that this Agreement is then capable of execution within the original intent of the parties.

3.0 Governmental Immunity. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act §§24-10-101 et seq., as applicable now or hereafter amended.

4.0 No Third-Party Beneficiary. It is expressly understood and agreed that the enforcement of the terms

and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

5.0 Board of County Commissioners of Weld County Approval. This Agreement shall not be valid until it has been approved by the Board of County Commissioners of Weld County, Colorado or its designee.

6.0 Choice of Law/Jurisdiction. Colorado law, and rules and regulations established pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules and/or regulations shall be null and void. In the event of a legal dispute between the parties, the parties agree that the Weld County District Court or Federal District Court for the District of Colorado shall have exclusive jurisdiction to resolve said dispute.

7.0 Attorneys' Fees/Legal Costs. In the event of a dispute between County and Property Owner, concerning this Agreement, the parties agree that each party shall be responsible for the payment of attorney fees and/or legal costs incurred by or on its own behalf.

8.0 Release of Liability. Property Owner shall indemnify and hold harmless the County from any and all liability loss and damage County may suffer as a result of all suits, actions, or claims of every nature and description caused by, arising from, or on account of the design and construction of improvements, and pay any and all judgments rendered against the County on account of any such suit, action or claim, and notwithstanding section 7.0 above, together with all reasonable expenses and attorney fees incurred by County in defending such suit, action or claim whether the liability, loss or damage is caused by, or arises out of the negligence of the County or its officers, agents, employees, or otherwise except for the liability, loss, or damage arising from the intentional torts or the gross negligence of the County or its employees while acting within the scope of their employment. All contractors and other employees engaged in construction of the improvements shall maintain adequate worker's compensation insurance and public liability insurance coverage, and shall operate in strict accordance with the laws and regulations of the State of Colorado governing occupational safety and health.

9.0 Binding Arbitration Prohibited. Weld County does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

10.0 Authority to Sign. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms. If requested by the County, Property Owner shall provide the County with proof of Property Owner's authority to enter into this Agreement within five (5) days of receiving such request.

11.0 Acknowledgment. County and Property Owner acknowledge that each has read this Agreement, understands it and agrees to be bound by its terms. Both parties further agree that this Agreement, with the attached or incorporated Exhibits, is the complete and exclusive statement of agreement between the parties and supersedes all proposals or prior agreements, oral or written, and any other communications between the parties relating to the subject matter of this Agreement.

12.0 In the event of a discrepancy between this agreement and the Weld County Code in effect at the time of the agreement, the terms of the Weld County Code shall control.

PROPERTY OWNER:

By: \_\_\_\_\_

Date \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LESSEE (IF APPLICABLE):

By: \_\_\_\_\_

Date \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO )

)

ss.

County of Weld )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
201\_\_, by \_\_\_\_\_.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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WELD COUNTY:

ATTEST:

Weld County Clerk to the Board

BOARD OF COUNTY COMMISSIONERS  
WELD COUNTY, COLORADO

BY: \_\_\_\_\_  
Deputy Clerk to the Board

\_\_\_\_\_  
, Chair